COURT NO. 2
Reserved Judgment
IN THE SHIGH COURT OR UTTARANCHAL AT NAINITAL.

Income Tax Appeal No. 57 of 2006

Commissioner of Income Tax,
Haldwani

....Appellant.

Versus

M/s Nainital Bank Ltd.,
7 Oaks, Mallital, Nainital.

..... Respondent

Sri Pitamber Maulekhi, learned counsel for the appellant
Sri S.K.Posti, learned counsel for the respondent.

Dated: April 5, 2006

Hon'ble P.C.Verma, J.
Hon'ble B.C. Kandpal, J.

(Delivered by Hon'ble P.C. Verma, J.)

This appeal under Section 260 A of the Income Tax Act, 1961 has been preferred against the order dated 25.11.2004 passed by the Income Tax Appellate Tribunal, Lucknow in Income Tax Appeal No. 4/Alld./1999 for the Assessment Year 1995-96, by which the Tribunal has dismissed the appeal filed by the Department.

2. Brief facts of the case giving rise to this appeal are that in the computation of income the appellant (respondent herein) shown the interest on G.P. Notes amounting to Rs. 5,45,31,276/- which had not been included in the chargeable interest. The contention of the respondent that interest on securities and Bonds were outside the Interest-tax Act as this was not interest on loans and advances. The Assessing Officer did not

accept this contention and relying on the Board's instruction No. 1923 dated 14.03.1995 as well as Notification No.So 2557 dated 11.9.1995 stated that any amount chargeable to Income tax under the head "Interest on Securities' was specifically excluded. This notification had specifically excluded 'interest on securities' received by banking Companies with effect from assessment year 1996-97. The Assessment Officer concluded that for the assessment year 1995-96, 'interest on securities' was clearly taxable and, therefore, interest on G.P. Notes amounting to Rs. 5,45,31,276/- was included in the interest chargeable in the hands of the respondent.

3. Against the said order the Department filed appeal before the Commissioner of Income Tax (Appeals). The CIT (appeals) allowed the appeal of respondent Nainital Bank holding that 'interest on securities' cannot be treated on par with on loans and advances and, therefore, the interest on Government Promissory Notes (GP Notes) amounting to Rs.5,45,31,276/- should not be included in the chargeable interest. The Department Preferred appeal against the said order before the Income Tax Appellate Tribunal (hereinafter referred to as the ITAT). The ITAT in is order dated 25.11.2004 observed that the issue raised is squarely covered by the decision of the High Court of Madras in CIT versus Laksmi Vilas Bank Ltd. (228 ITR 797) and held that interest on Government securities is not chargeable to tax under the Interest Tax Act and dismissed the appeal of the Income Tax Department. Felling aggrieved, the Department has preferred this appeal.

4. We have heard the learned counsel for the parties. The following question of law raises for the assessment year 1995-96:-

> "Whether the Tribunal was correct in law in holding that "Interest on Securities" is not chargeable to Interest Tax under Interest-tax Act, 1974 for the Assessment Year 1995-96?"

5. The learned counsel for the appellant contended that because the legislature intended to tax interest on securities, the exclusionary clause was deleted and, thereby interest on securities came within the ambit of the expression "interest on loans and advances" in the main section 2(7). He contended that when the bank subscribes to the Government Securities, it gives a loan to the Government although in the balance-sheet, it is shown as investments. He, therefore, submits that interest received by the banks on securities and bounds was taxable under the Interest-tax Act, 1974.

6. The learned counsel for the respondent placed reliance of law laid down by the Division Bench of Bombay High Court in the case **Commissioner of Income Tax versus United Western Bank Ltd.** (and connected appeals), reported in **Income Tax Reports (Vol.259) Bombay High Court), page 312**. In the said case the Division Bench of the Bombay High Court relying the case of the Apex Court in CIT versus Madurai Mills Co. Ltd. [1973] 89 ITR 45 (SC) held as under:-

> "We are confining this judgment to the case of the assessee-banks governed by the Banking Regulation Act, 1949. Under the Companies Act also the form of balance-sheet is prescribed. In that form, on the assets side, we have a column under the caption "current assets". We do not have such a column of "current assets" under the Banking

> Regulation Act. Under the banking Regulation Act, on the assets side, we have "investments" and "advances". However, we do not agree with the contention of the assessee that banks do not hold securities as stock-in-trade. In the annual report submitted by the United Western Bank Limited for the accounting year 1993-94-Schedule 17 deals with "Notes forming part of the accounts" in which it has been clarified under the caption "investments" that the bank holds investments in Government and other approved securities under two categories, viz, "permanent" and "current". Therefore, we are confining our judgment only to investments under the category "permanent". We do not wish to express our opinion on securities/debentures held under the caption "current"."

7. In view of above, we observe that the issue raised in the present appeal is squarely covered by the decision of the Division Bench of Bombay High Court in the case **Commissioner of Income Tax versus United Western Bank Ltd (supra)** and held that the question raised in this appeal stands answered in favour of the assessee.

8. The appeal is dismissed. No order as to costs.

(B.C.Kandpal, J.) **(P.C.Verma, J.)**

Dated: April 5, 2006.
P.Singh